

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATHAN NEPHI ZITO,

Defendant.

CR 22-113-BLG-SPW

ORDER

Before the Court is Defendant Nathan Zito's Motion to Amend Probation Conditions. (Doc. 26). Zito moves under 18 U.S.C. § 3563(c) and Federal Rule of Criminal Procedure 32.1(c) to amend his conditions of release to (1) replace his home confinement condition with a curfew, and (2) to allow Zito to travel out of state from August 7, 2023, through August 16, 2023. (Doc. 26 at 1-2). The United States opposes the home confinement condition modification but does not oppose the out of state travel condition. (Doc. 28 at 2). For the following reasons, the Court denies the motion as to the home confinement condition and grants the motion as to out of state travel.

The Court may modify probation conditions upon a defendant's motion under 18 U.S.C. § 3563(c) and Federal Rule of Criminal Procedure 32.1(c). When considering whether to modify a "discretionary condition" imposed under 18

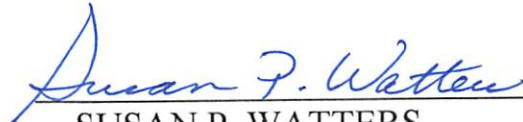
U.S.C. § 3563(b), the Court may consider the 18 U.S.C. § 3553(a)(1) and (2) factors, just as at sentencing. Zito seeks to amend his home confinement condition so that he may more easily visit his father, who has been placed into hospice care. (Doc. 27 at 4). Additionally, Zito seeks to amend his out of state travel condition to allow him to attend a family wedding in Nebraska and drop off his son at college in Utah.

Considering the nature and circumstance of the offense, the history and characteristics of Zito, and the need of the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment and to afford adequate deterrence to criminal conduct, the Court finds that modification of the home confinement condition is not appropriate at this time. The Court extends its condolences to Zito during this difficult period. However, as the United States points out, a great many imprisoned defendants miss significant periods of their lives and those of their loved ones as a consequence of their criminal conduct. Home confinement was imposed in lieu of a term of imprisonment to address the seriousness of the offense and to deter future similar conduct. A modification substantially altering this condition at this juncture would serve to greatly undercut the reasons the Court imposed the sentence. As such, the Court denies the motion as to this condition.

However, given the circumstances, the Court grants permission for the out of state travel request, given that the motion is unopposed by the United States and Zito's supervising officer. Zito may travel out of the district from August 7, 2023, through August 16, 2023.

IT IS HEREBY ORDERED that Zito's Motion to Amend Probation Conditions is GRANTED IN PART and DENIED IN PART.

DATED this 31<sup>st</sup> day of July, 2023.

  
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SUSAN P. WATTERS  
United States District Judge